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ABSTRACT

The Indian Child Welfare Act (ICWA) recognizes tribes' rights to exercise authority over the welfare of Native American children. Although the ICWA was passed more than 20 years ago, its implementation in Minnesota has been uneven. A conference was held to rectify that situation, and these proceedings provide, among other things, information on negotiations, based on relationships of respect and equity, that have been accomplished between a number of tribes and their county affiliates. The first presentation, by John Red Horse, discusses the concept of sovereignty and its significance for ICWA. Valerie Lane gives a national perspective of critical considerations on the interface between the ICWA and the permanency planning required by the Adoption and Safe Families Act (ASFA). Next, Georgia Wetlin-Larson presents a Minnesota perspective on this interface, followed by a rural county perspective given by Fran Felix. The fifth presentation is a roundtable discussion on sorting out the relationship of the tribal courts and the state court system. Roundtable participants included Anita Fineday, Herbert Lefler, and James White. Examples of best practices from the field are given by Fred Smith, Susan Ault, Julia Jaakola, Don Bacigalupo, Gertrude Buckanaga, and Mary Renville. The final presentation addresses strengthening the infrastructure of the ICWA, and is presented by a panel consisting of Rose Robinson, Rose Andrade, and Georgette Christensen. Three appendices present a summary of Department of Human Services guidance, data on Minnesota's American Indian children, and Minnesota's timeline for Indian child welfare cases. (TD)

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Sovereignty:

The Heart of the Matter

Critical Considerations on the Interface between ICWA and ASFA

edited by Esther Wattenberg

A summary of proceedings of the conference held
May 17, 2000

UNIVERSITY OF MINNESOTA

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Sovereignty:
The Heart of the Matter

Critical Considerations on the Interface between the Indian Child Welfare Act and Adoption and Safe Families Act

A Summary of Proceedings of the Conference Held
May 17, 2000
University of Minnesota

Edited by Esther Wattenberg

Sponsored by
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Cover photo provided by Patricia Albers, Chair, Department of American Indian Studies, University of Minnesota.

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Finally, the importance of this topic was underlined by the auspices provided for this forum: Title IV-E, Minnesota Department of Human Services' Family and Children's Services Division, the Center for Urban and Regional Affairs, and the School of Social Work, University of Minnesota. We appreciate their interest and support.

Program Agenda

Sovereignty: The Heart of the Matter
May 17, 2000

8:30 - 9:00	***Registration***
9:00 - 9:15	***Greetings,*** Jean Quam, Director, School of Social Work ***Invocation*** Lillian Rice ***Introduction to Conference,*** Esther Wattenberg Director, Center for Advanced Studies in Child Welfare, Professor, School of Social Work, Associate, CURA
9:15 - 9:30	***The Concept of Sovereignty and It's Significance for ICWA*** John Red Horse, Professor, American Indian Studies, University of Minnesota - Duluth
9:30 - 10:15	***The ICWA Challenge: Critical Considerations on the Interface between ICWA and ASFA - The National Perspective*** Valerie Lane, Esq., Attorney, National Indian Child Welfare Association
10:15 - 10:30	***Audience Response***
10:30 - 10:45	**Break**
10:45 - 11:30	***Grasping the Interface: A Minnesota Perspective*** Georgia Wettlin-Larson, Indian Child Welfare Program Advisor, Minnesota Department of Human Services
11:30 - 12:00	***Commentary on ICWA and ASFA from a Rural County Perspective*** Fran Felix, Supervisor, Child and Family Services Unit, Ashland County Human Services (Wisconsin)
12:00 - 1:00	**Lunch**
1:00 - 1:30	***A Roundtable: Sorting out the Relationship of the Tribal Courts and the State Court System*** Anita Fineday, Tribal Judge, White Earth Herbert Lefler, Judge, 4th Judicial District, Hennepin County James White, ICWA Advocate, Red Lake Band of Chippewa
1:30 - 2:30	***Best Practices: Examples from the Field*** Susan Ault, Cass County and Fred Smith, Leech Lake Julia Jaakola, Fond Du Lac and Don Bacigalupo, Carlton County Mary Renville, Hennepin County
2:30 - 2:45	**Break**
2:45 - 3:30	***Strengthening the Infrastructure of ICWA: Panel Presentation*** Rose Robinson, Director, Minnesota Indian Women's Resource Center Rose Andrade, Red Lake ICWA Urban Representative Georgette Christensen, Director, Family Services, Mille Lacs Band of Chippewa

Sovereignty: The Heart of the Matter

ICWA Conference Advisory Committee

Jay Adkins
Minnesota Chippewa Tribe

Judge Robert Blaeser
4th Judicial District, Hennepin County

Heidi A. Drobnick
Indian Child Welfare Law Center, Minneapolis, MN

Pat Eyrich
Hennepin County ICWA Section

Brian Guidera
Hennepin County

Leona Raisch
Indian Child Welfare Law Center, Minneapolis, MN

Rose Scott
Upper Midwest American Indian Center, Minneapolis, MN

ICWA Conference Planning Committee

A. Joyce Becenti
U of MN School of Social Work Child Welfare Scholar

Mary Black Elk
Little Earth United Tribes

Betty Greencrow
Hennepin County ICWA Unit

Paul Minehart
Minneapolis American Indian Center

Carrie Morris
U of MN School of Social Work Child Welfare Scholar

Nadja Printup
Minnesota Indian Women's Resource Center, Minneapolis, MN

Rose Robinson
Minnesota Indian Women's Resource Center, Minneapolis, MN

Sandy Robin
Center for Advanced Studies in Child Welfare

Gary Ten Bear
Minneapolis American Indian Center

Katie Turner
Minnesota Chippewa Tribe

Katherine Luke
Staff Assistant, Graduate Student, School of Social Work and Humphrey Institute

Introduction

Esther Wattenberg
Director, Center for Advanced Studies in Child Welfare
Professor, School of Social Work
Associate, Center for Urban and Regional Affairs (CURA)
University of Minnesota

This forum was opened with a traditional prayer, which was delivered by Lillian Rice, Potawatami/Ojibwe elder and spiritual advisor in the American Indian Community, as suggested by the Advisory Committee.

Although the Indian Child Welfare Act (ICWA) was passed more than twenty years ago (1978, P.L. 95-608), the need for a better understanding of ICWA among all persons engaged in promoting the best interests of the American Indian child persists.

In the several meetings with advisory committee members, it was apparent that preserving the traditions and practices that define Native American culture today is intertwined with the future of Native American children. ICWA captures this principle by outlining the Tribe's right to exercise authority over the welfare of Native American children. The antecedents to this landmark legislation are paved with wrenching stories of the boarding school era. This forum touched on the painful consequences of intergenerational trauma resulting from the massive removal of Native American children from their families and the unique values of Indian culture which were placed in jeopardy.

Sovereignty gives meaning to ICWA. This government to government relationship is recognized by the state when entering into agreements with tribal governments, and the language of state law reinforces the concept of sovereignty (M.S. Section 16B.06, subdivision 6):

> Not withstanding any other law, the state may not require an Indian tribe or band to deny their sovereignty as a requirement or condition of a contract with the state or an agency of the state.

In keeping with Indian tradition, the proceedings attempted to capture the stories as told by the presenters. The anguish of separation and placement outside of the tribal community, as well as the necessity to improve the lives of young Native American children was a persistent theme throughout the day.

While ICWA is a recognition that cultural attachment is a right of Indian children worthy of tribal responsibility, the working arrangements for implementation of this law is a work in progress.

The context of this forum is worth recording. Minnesota passed the Minnesota Indian Family Preservation Act in 1978 (Minn. Stat. 257.35-257.357d) to strengthen and expand parts of the federal ICWA. Moreover, Minnesota is one of a few states that has developed a Tribal/State Agreement.* This document describes a comprehensive working relationship between Minnesota's Department of Human Services, the eleven Minnesota Tribes, and representatives from counties whose service area is comprised of or adjacent to a reservation. This document maximizes child welfare decision making by Tribes regarding Indian children; and addresses barriers to Indian child welfare services. The Agreement's purpose is to protect "long term best interests" of Indian families and children by maintaining the integrity of the Indian family, extended family and tribal community. Additionally, the Minnesota Department of Human Services, Family and Children's Services Division, sustains Native American Advisory groups and publishes guidance on ICWA and the permanency planning features of the Adoption and Safe Families Act (ASFA).

Nevertheless, in a state-supervised and county-administered child welfare system, the implementation of ICWA has been uneven.

These proceedings will, to some extent, provide information on the excellent work that has been accomplished between a number of tribes and their county affiliates. The county/tribal negotiations, based on relationships of respect and equity on behalf of the best interests of Native American children are heartening.

The proceedings of this forum, "Sovereignty: the Heart of the Matter — Critical Considerations on the Interface Between the Indian Child Welfare Act and the Adoption and Safe Families Act," will, we hope, provide a marker on where we are, as we begin the new decade and proceed to the unfinished business ahead.

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* The Minnesota Tribal/State Agreement is available on line at the Minnesota Department of Human Services' web site: http://www.dhs.state.mn.us/childint/programs/icwa/default.htm

The Concept of Sovereignty and Its Significance for ICWA

John Red Horse
Professor, American Indian Studies
University of Minnesota—Duluth

John Red Horse began his presentation with a story from his early days as a member of the National Indian Youth Council (NIYC):

Sovereignty, Sovereignty, Sovereignty

"Those of you who are familiar with NIYC understand that we were an energetic bunch of college students. We wanted to start Indian studies programs all around. We wanted to work in civil rights as well, not only in the treaty rights area but also in the civil rights area getting fishing rights and voting rights for Indians in the Southwest particularly.

"I had an opportunity at that time to set up a meeting with a statesman from the State of Minnesota, Mr. Roger Jourdain. And the kids that I took [to the Clyde Memorial Institute in Wisconsin] were really excited meeting this recognized leader from the Red Lake Reservation. . . . they had a series of questions ready for Roger, and Roger was talking about tribal responsibilities, the Red Lake Nation, what they had done and their leadership principles. He really didn't talk much about civil rights.

"So one of the students was going to put him into the corner here, and he said, 'Well, what is the tribal role in civil rights as we walk through our path in the 70s?'

"Roger sort of stiffened up . . . .He just sort of looked at our students, and he was very forgiving at that time...and he said, 'You know there are only three things that tribes have to be concerned about.' The students were getting on the edge of their seats. They were waiting for these magical pieces of wisdom to come out, and Roger said, 'Sovereignty, sovereignty and sovereignty.'

"You could just see the passion in him as he started talking about the trust responsibility, the abdication of trust responsibility, the role of tribes in the United States and the treaty rights that have been withdrawn many times. The single-minded passion of a national leader.

"You begin to understand why Red Lake . . . successfully avoided removal down to White Earth, . . . that passion that really came from those leader groups in those years. . . . Sometimes we're very caustic and critical in our appraisal of tribal leadership, but in many ways that tribal leadership . . . led to that rush of legislation in the 1970s that organized and restructured and brought to surface where we are as nations in this country. That passion is part and parcel of the Indian Child Welfare Act (ICWA)."

Professor Red Horse also told a story about training a group of Michigan child welfare and child protection workers on ICWA a few months before it went into effect and having to educate them on sovereignty. "We had to challenge people with the understanding that ICWA does not give tribes sovereignty. Sovereignty is inherent, predates ICWA by hundreds of years, and is a concept that springs forth, not from some federal legislation, but by the very fact that Euro-Americans dealt with sovereign nations. It isn't given to us out of ICWA.

"So in the construct of sovereignty, what does ICWA really do?"

How ICWA Reflects Sovereignty

External Sovereignty

"The fundamental function of ICWA is to set up a framework for intergovernmental relations among sovereign entities." This reflects the external domain of sovereignty, according to a construct used by Michael Deloria, Jr. in his presentation for the American Indian Research and Policy, 1995, "You find in ICWA the principle of full faith and credit with tribal institutions such as courts, foster homes, child welfare workers."

Red Horse noted that, among the many states, "Minnesota has worked very hard. I remember that very much because half of my class and my federal Indian Policy course were working on that tribal/state agreement, and we'd see them as we passed for lunch . . . .It was wonderful to understand that the provision of intergovernmental relationships was being worked through in a tribal/state agreement."

Internal Sovereignty

Within the domain of internal sovereignty, ICWA reinforces that "the tribes, through inherent sovereignty, have the principle authority to recognize and to set up a government, to set up a court system, to set up several jurisdictions, to license foster homes, to decide upon membership.

"There is still confoundedness about this," he noted. "A lot of courts would just like to say, 'Well, these young people moved from the reservation to an urban area. They gave up their membership. They gave up their rights. But that's not a legitimate function of a court under the provisions of dealing in an intergovernmental full faith and credit as ICWA sets up."

Also under the domain of internal sovereignty, ICWA changes the paradigm of family within society. ICWA reinforces the extended family. "We have to look at family in the traditional manner of the extended kin system. In the absence of that kin system, we have to replicate that kin system. . . . When we begin to read material that addresses individual dysfunction of the birth mother and we begin making decisions around that paradigm of the nuclear family, we are not operating within the construct of the intent and purpose of

ICWA." Furthermore, the family is contained within the tribe, and "under ICWA [we] have to observe the social and cultural standards of the tribe."

This is a significant shift. "We don't teach about developmental or motivational psychology that hinges around the extended kin system. . . . During the relocation period when Indians went to the urban area, they . . . were confronted with another theory of human development . . . [They] were being judged and evaluated not upon [their] social and cultural fabric of family life, but upon a model that was correct by definition for a technological society. A totally different thing in terms of ego integrity through life. . . . Under the theory of ego psychology, the ultimate goal of ego integrity is to be a rugged individual. If you go to an Indian community, as we open the ceremony, our elders say, 'To be an elder in the community is a job,' because when you are an elder in the community, you are a parent of that community. Your ego integrity is not retirement. Your ego integrity is assuming leadership and responsibility."

Ego psychology "a linear map. . . . If you look at an Indian social and cultural model of the extended family, you'd begin to see a circular form of human development where you grow into a relational responsibility. Relationship, relationship, relationship."

This paradigm shift was underlined for Red Horse when he was meeting for the first time with a group of Indian programs from across the nation. He said, "You know, the phenomenal thing, . . . we didn't even know each other. We hadn't gone to school with each other. We knew of each other. That's about the most that you could say. We had a program from Alaska, a program from Washington, a program from Arizona, a program from California. In total we had seven Indian programs. And every program had independently written what they wanted to do with their effort in child abuse and neglect was to reaffirm the cultural and structural integrity of Indian families and communities following that definition or that mandate from the Indian Child Welfare Act."

For the first eight or nine years following ICWA, "we still continued to observe professionally families and communities from a deficit model. . . . no one could see the strength in an extended family system."

Finally, in the middle of the 1960s, Health and Human Services started focusing on strengths. "I'll never forget the first conference I went to sponsored by Health and Human Services. . . . They started talking about how they were there to help us discover the strength of our families. That's almost like telling us they're going to help us discover the attributes of sovereignty. No, we knew what the strengths were. We knew where the community was. We also knew we were ready to confront where the stressors were. It was leadership from within."

In Summary

Professor Red Horse summarized the important elements of the links between sovereignty and ICWA. Under the domain of external sovereignty is "intergovernmental relations, the understanding that a tribe is not a little brother, a smaller brother, or a second class citizen, but an equal among equals." Under the domain of internal sovereignty, "tribal people in groups begin to articulate what exactly are our cultural and social standings, and articulate those in a way that supports our community."

He noted that long before Health and Human Services existed, and long before Hillary Clinton wrote her book, traditional communities in Northern Minnesota and Northeastern Wisconsin were doing the task that ICWA was to accomplish. "The only thing we wanted to do was to develop a community of child care and concern, of family care and concern, understanding that it takes a village to raise a child. I hope that as we proceed through the day, that we will constantly remember that it takes that village to raise a child."

The ICWA Challenge: Critical Considerations on the Interface between ICWA and ASFA—the National Perspective

Valerie Lane, Esq.
Attorney, National Indian Child Welfare Association

"I bring you greetings from the National Indian Child Welfare Association, which is located in Portland, Oregon. The National Association is an organization which advocates for Indian children and families. The organization also provides technical assistance and conducts research on issues relating to Indian Child Welfare

Autumn and Her First Mama Kwa Kap

"I would like to begin my presentation in a very traditional way by story telling. It is our belief that wisdom is passed through the generations, through the ages, through stories.

"One afternoon long, long ago, a young woman named Autumn Eyetoo looked out of the window. As she looked out of the window, she smiled. She walked across the room and she looked in the mirror. She admired what she saw. It was her reflection. She was feeling some degree of pride, but at the same time, she felt the traditional value of humbleness. She placed a barrette in her hair and then she looked in the mirror and saw her beautiful ribbon dress and her beaded belt.

"This was a special day for Autumn Eyetoo, because this was her first Mama Kwa Kap or Bear Dance. She looked forward to this day for many, many years. Your first bear dance takes place when you're about 12 or 13 years old, according to the Ute people, and this was Autumn's day.

"It was time for her to leave the house and to walk down the road through the sagebrush. As she walked down the road, she saw children. The children looked and smiled at her and said, 'Hi Autumn, hi Autumn,' and they admired what she was wearing and how pretty she looked. She remembered when she sat by the road and watched other young women go down the road to their first Bear Dance. She saw the ponies gallop past her, and she admired the beautiful tall towering trees and the beauty of the sacred Sleeping Ute Mountain.

"The Weenuchu people, or Ute people, looked forward each year to the Bear Dance. It always came in the spring of the year when the earth had warmed and the hardships of winter were fading. In the old days it came when the people moved out of the hills, like bears stirring from their winter dens. Now most of them lived in modern homes, but still the ancient dance brought the tribe together each and every year."

"Autumn passed the wooden stands where the elders were playing hand games. In the air she could smell the fry bread. She could smell the simmering stew and the cedar burning in the fire. Autumn continued her journey, and she could see the babies in the cradleboards sleeping peacefully. And then when she was almost to the entrance of the dance grounds, which we call the cave of sticks, she smiled and knew this was her moment to enter her first Bear Dance. She squinted as she entered the arena area, and she looked for a place where she could sit. Over there she saw her best friend, Tasheena, and she smiled. Tasheena and her friend said, 'Autumn, Autumn, come here, come here, sit with us.' As she approached them, they all hugged really strong hugs. It was their first Mama Kwa Kap also. In the background she heard the sounds of the sticks. And in the middle of the arena stood a very special person. He was the Cat Man.

"Now ladies, you all are going to be able to relate to this. The Cat Man wears a brightly colored ribbon shirt and he carries a long stick. And his role is to keep the men in line. I told you, you were going to be able to relate this. The idea of the Bear Dance is that a young woman will approach a young man or an older man, and swish her shawl, . . . and the man will dance with her. But you know how men can be. That's why we need a Cat Man, to tap the man on the shoulder or on the buttocks and make sure that he dances with that young woman.

"In any event, Autumn saw a young man that she would like to dance with. She had her eyes on him for a long time. After the first dance she went over to the young man. She was almost there. She swished her shawl, but guess what? He dashed off and the Cat Man couldn't catch him, ineffective Cat Man that he was. Autumn and her friends sat there all afternoon, and it didn't seem fair, because some young men had two women on their arms, and Autumn and her friends just sat and sat and sat. And those beautiful clothes I told you about earlier, well they became dusty and wrinkled.

"Finally, some elders, some women, came up behind them and they started giggling, and they tapped the girls' backs. Then they started laughing. 'You'd better get up and dance or you'll be as old and single as we are!' And oh, the old women laughed. Autumn and her friends were respectful, but boy, were they embarrassed. So finally as the sun was setting behind the Sleeping Ute Mountain, Autumn saw some older men sitting on the other side of the tribal grounds. She hadn't seen them before, and she turned to Tasheena and said, 'Why, there are our grandfathers. There are the elders. Why don't we go and dance with them?' And Tasheena and the other girls just laughed and said, 'Autumn, no one ever dances with the elders!' And they giggled and giggled.

"Well, Autumn jumped up out of her seat, and she looked at them fiercely and she said, 'I shall.' And at that point she walked over to an elder and she touched his hand. The elder had glasses on. Autumn said, 'Grandfather, what an honor it would be to dance with you.' And the grandfather took his glasses off and said, 'These eyes my child, they haven't seen much for a long, long time.' But then he tapped his boot and he said, 'But these feet remember much.' With that the grandfather rose. Remember, being an elder is a 24-hour job. He and Autumn walked to the tribal dance ground, and behind them followed Tasheena and all the other young women, each with another elder. When

Autumn looked up at the sky, she saw the faint sliver of the moon, and it was in the shape of a bear claw. And this night would be always be remembered as a special night, not just because it was her first Mama Kwa Kap, but this was the night that the grandfathers danced with the children. And so it was told.

"That's a story by Linda Theresa Raczek which I adapted. I tell that story because it reminds me of growing up with my grandparents. We were in the same household and I learned so very much from them."

ICWA Designed to Keep Children Dancing with Their Elders

"The Indian Child Welfare Act, you see, is more than a Federal law. It's more than mere words on paper. The purpose of ICWA is to preserve and strengthen Indian families. It was designed to keep the children dancing with their grandfathers, their grandmothers, their aunts, their uncles, extended family, etc. By complying with the Indian Child Welfare Act, Indian children can grow up knowing their culture and experiencing it first hand. It is through the children that the elders' teachings, values, languages, unique practices and traditions are passed on and preserved. Each of us in this room is a reflection of our family members and our extended family members. We embrace their traditions and their values. We acquired a sense of self, of self-esteem, and of cultural awareness from our families. Our families played a major role in shaping our lives.

"Twenty-two years ago, in 1978, Congress enacted ICWA to correct the wholesale removal of Indian children from their families. Testimony in the mid-1970s indicated that more than one-third of all Indian children were being removed from their families and from their tribes. By passing ICWA, Congress recognized that there is no resource on this earth that is more vital to the continued existence and integrity of Indian tribes than their children. To Indian people, and to most people, children are our most precious resource.

"The United States has a direct interest as trustee in protecting Indian children. Section 1902 of the Act states that it is this nation's policy to protect the best interests of Indian children and to promote the security and stability of Indian tribes by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of those children in foster or adoptive homes which reflect the unique values of Indian culture.

"There is still a widespread lack of knowledge and understanding of ICWA by attorneys, judges, investigators, and native people. When I tell people the Act is 22 years old, most people are shocked. We have gone to the moon, we're probably going to be at Mars soon, and we have advanced so far with technology. It's time for all of us to know about the Indian Child Welfare Act, to develop the skills to apply the Act, to work cooperatively with one another, and to make ICWA a reality in this country.

"ICWA provides us with many opportunities for good social work practice. This conference provides us with the historical opportunity to learn about ICWA, to establish valuable contacts with one another. There is so much wealth of experience in this room

collectively, and it ought to be shared today and in the future. There are also many resources for our Indian children that we can share to carry out this important federal mandate."

ICWA's Key Provisions

"Before we can examine ASFA and ICWA together, we must focus on what ICWA provides. Here are a few of the key provisions.

"First, ICWA requires that proper written notice be given to Indian parents, Indian custodians and the Indian nations in state child custody proceedings involving an Indian child. If the identity or whereabouts of the parents are unknown, notice must also be given to the Bureau of Indian Affairs. . . .

"Second, in foster care cases, the standard of clear and convincing evidence must be met before you can remove a child and place them in foster care.

"Third, specific placement preferences for foster care or adoptive care exists and must be followed. In all of the states across this nation, we need to undertake various efforts to recruit Indian families to be foster parents and adoptive parents. We can't wait until an ICWA case comes along and then say we don't have a placement.

"Fourth, active efforts must be undertaken to provide rehabilitative programs and remedial services to prevent the breakup of the family. These programs must be culturally relevant. Studies have shown that Indian people normally do not avail themselves of mainstream services for many, many reasons. We need to make these services culturally relevant. And it only takes some time and some research, and also networking with the people in this room, to find out where those services are and how they can be provided.

"Fifth, the evidentiary standard of beyond a reasonable doubt is required in the termination of parental rights. This is a higher standard than in non-Indian state custody cases.

"And last but not least, to recognize that Indian tribes have the right to intervene and accept the transfer of ICWA cases."

ASFA Does Not Modify ICWA

"How do ICWA and ASFA interface? ASFA does not modify ICWA. The two acts can be successfully integrated." Lane then provided a few examples of when ASFA/ICWA issues are likely to arise.

"Under ASFA, reasonable efforts to prevent removal or to reunify the child with his or her family after removal are no longer required in certain circumstances. One of those circumstances might be when a parent previously had parental rights involuntarily terminated to a sibling of the current child in custody. . . . While ASFA changes current law so as not to require states to make reasonable efforts in certain circumstances, in

ICWA cases, active efforts to provide [remedial services and rehabilitative programs] are still required.

". . . a termination of parental rights (TPR) petition must be filed and efforts made to locate an adoptive family, when a child has been in foster care for 15 of the last 22 months. Parental rights under ICWA may be terminated only when there is evidence beyond a reasonable doubt, including the testimony of expert witnesses. And I say expert witnesses [that the continued cusotdy by the parent is likely to result in serious emotional or physical damage to the child] . . . Active efforts means . . . providing remedial services and rehabilitative programs designed to prevent the breakup of the family. Indian children, as determined on a case by case basis, will frequently fall within one of the exceptions to the termination of parental rights filing requirement."

For example, "ICWA already provides for the placement of children with extended family members as preferred placement."

ASFA requires a permanency hearing "within 12 months after the date the child has entered foster care. There is no comparable provision in ICWA. Permanency hearings will take place within the time schedule established by ASFA. . . . The decision concerning the permanency placement for the child, however, will continue to be governed by the substantive requirements of ICWA. Thus, you must follow the 'beyond reasonable doubt' standard. You must have tribal input on the [placement] preferences. It is worth noting that the 12-month [permanency] hearing is not a cutoff date for parental rights involving Indian children. ..."

Embrace ICWA with a Full Heart

"I'd like to wrap up by just sharing with you that family is like water and like air— you can't do without it for very long. I ask that the Creator bless and guide all of you with the knowledge, a solid knowledge, a growing knowledge, about ICWA; that you be blessed with the respect for tribal sovereignty and inter-governmental relations; that you be blessed and guided with passion and understanding to follow the good social work practices established by ICWA; and lastly, that you be inspired to embrace ICWA with a full heart."

Question/Answer Period

Q: Esther Wattenberg, Director of the Center for Advanced Studies in Child Welfare and Professor at the University of Minnesota School of Social Work, asked if there is a clear understanding across the nation about the differences between the pursuit of reasonable efforts required under ASFA and active efforts required under ICWA.

A: "No, . . . most people across this nation are still clueless regarding ICWA. . . . Active efforts requires a higher [energetic] standard. In Dallas, if a non-Indian child is in state custody and the parents have, let's say, a substance abuse problem, the caseworker will give that non-Indian parent a list of contacts at various agencies, and that's it." In Indian child welfare cases, "that parent should not only be given a list, but a list that's culturally

relevant, and every effort should be made to prevent the breakup of that family." The problem in Texas and "in other states is that [child protective services doesn't maintain] a list at the child welfare offices they can turn to."

Lane noted that there is a booklet entitled "ASFA: Issues for Tribes and States Serving Indian Children," written by David Simmons and Jack Trope, which gives detailed guidance on how ICWA and ASFA interface.

Q: Wattenberg next asked if children's tribal identification has been an issue?

A: "Yes. First, let me say that ICWA supercedes MEPA (Multi-Ethnic Placement Act) and IEPA (Inter-Ethnic Placement Act)." Many times Indian children are not identified during the initial investigation because people erroneously "expect Indian people and Indian children to look a certain way." If an Indian child is identified, it's usually very late in the case. "The easiest way to find out if you have an Indian child in protective custody is to ask the family, 'Are you American Indian?'" Lane also talked about Section 1917 of ICWA, which gives anyone who is Indian the right, after age 18, to petition the court to unseal their adoption records so they may obtain information to make tribal connections. Many Indian adoptees "indicate they feel like apples—red on the outside and white on the inside because they don't know their cultural identity. When people ask them, 'What is your ethnic background?' they have no idea. These children experience a lot of pain throughout their lifetimes. Section 1917 is a way for them to find their way home [to their tribe and to their culture]."

Q: An audience member asked for Lane's opinion regarding notice to family members when that person may be inappropriate, for example, accused of sexually or physically assaulting the children in the past.

A: "The Act clearly states that notice is required to Indian parents, custodians, and tribes. . . ."

Lane ended by saying, "I'd like to encourage all of you to continue to grow with ICWA. Training is very important to all of us. ICWA is not one of those documents . . . that you just pick up and you know what to do with it right away. It doesn't fly off the page. . . . Training is absolutely necessary."

Grasping the Interface: A Minnesota Perspective

Georgia Wettlin-Larson
Indian Child Welfare Program Advisor
Minnesota Department of Human Services

Georgia Wettlin-Larson presented a video, *Dakota Exile*,* on the historical impact of boarding schools on Indian children. She began her presentation by noting that she finds the video "very, very significant in any number of ways, particularly since it is from the Dakota communities, and my own father was impacted by the boarding school when he was very young. . . . I think all Native people sitting in this room have been touched in one way or another by the boarding school era and by the policy of forced assimilation.

"The passage of the Indian Child Welfare Act of 1978 was Congress' attempt to redress these horrendous and tragic outcomes as a result of the boarding school and the policies of forced assimilation. ICWA, over the last 20 years, has provided" a way for tribal people to begin the "journey to recapture the spirit that had been stolen so many, many years ago.

"I am proud to be an employee at the State of Minnesota Department of Human Services, because the work the State of Minnesota has done is very profound. . . . Many other states will not even comply with ICWA or even recognize that ICWA is, in fact, law."

Minnesota Responses to Barriers to Program Development

Ms. Wettlin-Larson noted that in Minnesota and in "Indian country overall," there continue to be barriers to program development. She identified the barriers and discussed responses to them in Minnesota:

- Lack of funding. "To expand upon the federal Indian Child Welfare Act, Minnesota enacted in 1985 the Minnesota Indian Family Preservation Act (MIFPA) to address the issue of lack of funding." The State provides in grant contracts $1.5 million biannually," which allows tribes increased decision-making regarding their children. The State also developed mechanisms that would earn additional revenues for the tribes and for urban program. Funding levels are insufficient to carry out the intent of MIFPA.

- Jurisdictional barriers. Jurisdictional barriers have been addressed in Minnesota through the Tribal State Agreement. Moreover, while ICWA does not provide any federal requirements to guarantee compliance, the Tribal State Agreement does address this issue.

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* *Dakota Exile* is available from the Minnesota Historical Society.

- Lack of trained personnel. The state is also committed to providing ongoing training to the bench, to county attorneys, to guardians ad litem and other representatives in the systems, and to Tribal judges. "We find that there are many in the bench and in the legal field who do not have the slightest notion of what the federal and state statutes are pertaining to the placement and protection of Indian children." This training should begin in the fall. In addition, Minnesota now has a child welfare training system to provide training to social workers in the field, supervisors, and tribes. For a small fee, private child placing agencies and urban Indian programs may also have access to the training programs. The DHS Social Services Section Manual on Indian Children has been revised with help from Tribes and urban Indian programs to ensure that best practice will prevail and "that this is an ultimate tool for workers in the field. That manual and the training manual have already permeated quite a bit of the State at this time."

- Lack of information about the extent of the problem. There will be ongoing specialized training about the extent of the problems plaguing Indian families and children. "We're talking more and more about providing culturally competent skills-based training."

- Lack of culturally appropriate service models. "We provide special focus grants that are awarded to programs which are providing or have developed innovative approaches to successful families being together, staying together."

- Community denial about abuse and neglect. "The State has done a very good job in terms of collection of data that will provide us more of an idea of what needs to be done to address the extent of the problems of abuse and neglect in the Indian communities." She noted innovative programs that "are looking at the issues of generational trauma as a result of federal policies of forced assimilation and all the inherent problems and devastation that has stayed with us for generations. These innovative models are looking at that aftermath, acknowledging that aftermath, and developing pathways for healing for respective communities throughout the state. Some communities and Tribes are looking at developing their own tribally specific parenting curriculums. Our old ways of parenting have long been eroded or bastardized or completely decimated. . . . So many, many nations across the country are going back to the elders and trying to find out and regain and recapture those traditional ways of how we did raise our children."

The Relationship between ASFA and ICWA in Minnesota

ASFA, signed into law in 1997, was to address "foster care drift," those children who drift from one placement home to another to another. It was also passed to address the harm and violence being done to children when too much attention was placed on reunification with parents. "The primary piece with ASFA is looking at the passage of time through a child's eyes. A month to a child is an eternity. It almost makes one cry just thinking about it."

The Tribes were not, but should have been, involved in the discussions when ASFA was first enacted. "Tribes perceived a threat to sovereignty and to self-determination relative to . . . making decisions [about] their children. They were concerned about the stringent timelines that children must reach permanency. They were concerned about permanency planning . . . Tribes across the nation and here in Minnesota oppose the notion of terminating a parent's parental rights to their children. It's a cultural concept that is very . . alien among many peoples.

"As Valerie stated, ASFA does not modify ICWA or MIFPA. . . . While the philosophical basis for the ASFA and ICWA are different, their provisions are capable of being successfully integrated." Wettlin-Larson noted that Lane had already reviewed the notice provisions, the placement preference provisions, and active versus reasonable efforts.

"The bottom line is that Indian children need permanent homes. They need to know that they are coming home, this is their home, this is their room, these are their belongings, this is their family, and that it's going to be there when they wake up in the morning, that all these things are going to be there when they come home at night. We know the developmental impact on children who are not nurtured, who are not cared for, who are not loved, who are not supported, who do not have stability. Permanency is needed. It is a lifeblood for Indian children, for all children.

"The State is committed under the tribal/state agreement to sit down on an annual basis with the Indian Child Welfare Advisory Council to dialogue about these issues and to reach consensus about what needs to be done relative to the wellbeing of Indian families and children." Under ASFA, studies will be required to address outcome performance measures, "and that will also be a part of the discussions that will need to be done involving tribal and urban Indian programs and the State itself. Our joint efforts, whether we be county folks, tribal folks, urban Indian folks, the judicial system, is that we must continue to ensure focus on protecting culturally appropriate practices. . . . We are all here for the children, for all children, Indian and non-Indian. And all children deserve to have a sense of belonging and a sense of connectedness, so essential to their well being and growth and development. The children are our future."

Question/Answer Period

Q: Wattenberg noted that the concept of TPR (termination of parental rights) is not supported by ICWA, but that permanency provision under ASFA require us to think about it. "Is that something that has to be resolved?"

A: Noting that TPRs do occur in tribal courts, Wettlin-Larson said there are two issues in Wattenberg's question. First is that "Tribes want to have the autonomy to make those decisions themselves." Second is that "adoption is not the only option" for permanency. There are prevailing social customs and traditions within each tribe that affect permanency. Among the Dakota people, there is a relative-making ceremony. The Ojibwe have something similar. "I think if we're looking at dialoguing with Tribes, which should have happened at the outset, we would have looked at other permanency

options and wouldn't be pushing children into placements" or terminating at a time when it's not appropriate.

Commentary on ICWA and ASFA from a Rural County Perspective

Fran Felix
Supervisor, Child and Family Services Unit
Ashland County Human Services (Wisconsin)

Boarding School Chains

"Let me just tell you one story. An elderly woman in my family who died just a couple of years ago had, at the age of five, been literally taken away to the boarding school. She spent her growing up years there in Genoa, Nebraska. About 15 or 20 years ago she was asked to sit on a panel to talk about what had happened in the boarding school, and she said, 'Oh, there weren't any problems. It was nothing.'

"About five, ten years after that, she began to write stories about the boarding school experience. These stories included very detailed descriptions of what happened to kids there, what that was like. These descriptions included descriptions of the kind of punishment and the personal way they were treated, and the message to them about being Indian. You could not read these stories without crying; you had to have empathy for this little girl going through this. I asked her, 'You said there weren't any problems. Why are you able to write these stories now?'

"She said they had an all-school reunion and she went back to Genoa and visited the place where the boarding school was. The school itself was torn down. It was a pile of bricks. And she picked one up and showed it to me. She had brought one back with her. She said, 'I knew that it could never get me again.' Now this was an elderly woman who was a special education teacher. She had traveled all over. She had finished her education at Cambridge. And yet the chains of the experience were so awful for her that it made it impossible for her to talk about it until she knew that this was gone.

"Nothing rational about it, it's an emotional response, and I think it's real important for all of us to remember those ties, those chains."

Indian Kids in a Rural County

"I am a Minnesota Dakota. My father was born on the Santee Reservation in Nebraska, so that's where my affiliation is, although I was raised in Minnesota, as he was. I'm living on a Lake Superior Chippewa Reservation in Wisconsin, and I'm a supervisor of the Children and Family Services in a county human services agency. Now that's a definition of schizophrenia.

"I'm a supervisor in a small county agency. There are seven staff that I supervise who are responsible for all of the activities, child protection, juvenile court intake, foster care,

working with the severely emotionally disturbed, and on and on and on. Every single worker there has many jobs.

"So as an Indian person working in a county agency, I do a better job with Indian people, right? Yeah right. Let me just tell you what some of the statistics are . . . . In 1998, there were 56 kids in placement. That's all kids, not just Indian kids. In 1999 we reduced that to 36. This is for the whole year. Remember, this is a small agency. Unfortunately, 45 percent of all the kids who are referred by law enforcement are Indian kids and 80 percent of the kids that I am responsible for placing in group homes or child caring institutions are Indian kids."

Kids Coming in through the Corrections System

"Now what does that say? It makes me cringe every time I have to even talk about it. What is happening? We are focusing on the Indian Child Welfare Act and what is happening in the rural county that I'm in, and I would bet that a very similar thing is happening in Minnesota, that the kids . . . are coming in through the juvenile court intake as delinquents. The description of these kids and their families are exactly the same issues that you have . . . .The families are chemically dependent. They're the product of people who came out of boarding schools. (Now I'm not saying that all boarding schools are bad, and I am talking about the group of people we see as clients, not all Indian people.) In the boarding school they were raised often by other children. How did they learn to be parents? How did they learn to be functioning members of the community? We are seeing the children of the children of the children, and the problems in the kids that I am placing are so complicated and so difficult that our foster homes can't handle them. So what's the answer?

"In 1998, when there were 56 kids in placement, our placement costs were something like $435,000. In 1999, . . . 36 kids, the placement costs were $654,000. So we're paying at the back end for the problems of these kids. I believe what is needed is to, first of all, recognize that kids coming in through the correctional system are still Indian child welfare kids. The reason I'm differentiating is that anything a child does that would be a crime if they were an adult isn't covered by the Indian Child Welfare Act. But in spirit, we need to, and we do, notify the tribe and get them involved as soon as a kid comes into the court system, no matter what it is. Maybe that's an advantage that we have because the juvenile intake and the Indian child welfare stuff are all in one."

Wrap-Around Services is Time-Consuming but Appropriate Answer

"The question that we come to is: How long do we work with a family to reunify children once they're in placement? Or, before they're in placement, what can we offer this family? Now remember, I have seven staff doing everything. I believe that the answer is to take the money that we're spending on the back end, put it on the front end, hire Indian and non-Indian staff, do whatever it takes to do what is commonly known as wrap around services.

"Everybody has talked about extended family. The families we're working with are often isolated from their own families. The wrap around concepts include redeveloping family teams," not just professionals, but people who are already involved with the family's life. "You hear the family's story, and in that process you find out who the relatives are. Who are the people they turn to? Is it the Little League coach if their kids are in sports? Is it the neighbor? Is it the minister? Whoever it is, you get them involved in this family team. This is a very time consuming process. Nobody has the time to do that. It requires intensive time to coordinate family teams.

"I'll just give you one example of how effective it is. . . . The on-call worker had gotten a call from the father of a teenage girl and he said, 'Get this kid out of here. She's destroying my family. She's creating havoc. She's physically abusive to us.' So we found a relative for her to go to for the night. The next day we got a call from the principal of the school. She had assaulted the guidance counselor because he was trying to take the phone away from her. So we went down and met with the school, and that was the beginning. We sat down with the parents and the girl and the school and just talked about what was going on. This girl was hearing voices. She was mentally ill. She was right there with us and could tell us. She told us what was wrong. That began the process of expanding to a family team everybody that this family wanted involved, as well as counselors, teachers, the school, etc. Initially we had weekly meetings. That's why I say this is a very time-consuming process. We had weekly meetings, and the idea is to get the family to say, this is what's wrong and this is what we want to happen, or, this is what we want to do about it. And our job then is to find the resources. It requires flexible funding. At one point we had to buy them a tire; they couldn't get to a counseling appointments because they didn't have a spare and the tire had gone flat. So we repaired the tire and bought them a spare.

"This young girl graduated from high school. She in fact had a real talent for art and the school had her paint a mural on one of the walls. She's now at a college in Wisconsin. Her life isn't without problems. She has to take medication, etc. The family remains part of the system because they have another son coming up with similar problems. Nothing happens rapidly. Families aren't going to change with six weeks of parenting education or six months of counseling. They will begin to make some changes. But what you want to do is . . . have them set up a support system which takes you out of a job, which will continue on when your job is done. And the support system is really the part of the Indian community that is already there. But for these particular families it either doesn't exist or the other members of the family are in as much difficulty."

In Summary

"One of the things that I am struggling with right now is that judges and district attorneys are becoming more and more concerned with community safety, the public safety, and we are ending up with more children adjudicated delinquent and sent to corrections. And I'm not sure what can be done about that, but it is another part of this Indian Child Welfare issue. It is another part of the need for training. Judges and district attorneys and lots of social workers don't understand that these kids are causing problems or getting

into trouble with the law for the same reason, the same family reason that kids are being placed out of their home under the Indian Child Welfare issues.

"Again, the most important question that I struggle with is how long do we continue to work with a family. How long do the kids remain in foster care? And I think we actually have a lot of leeway in ASFA . . . . If we're doing what we need to do and placing kids with relatives, if we're doing what we need to do in providing the services, and they are making progress, I believe that is a compelling reason not to go to termination. I haven't had any trouble pushing those limits out, just letting them slide. Again, the issue of the family teams and the wrap around services I think is the way things are going to go in the future."

A Roundtable: Sorting Out the Relationship of the Tribal Courts and the State Court System

Anita Fineday
Tribal Judge, White Earth

Herbert Lefler
Judge, Fourth Judicial District, Hennepin County

James White
ICWA Advocate, Red Lake Band of Chippewa

Anita Fineday, Tribal Judge

"The conference is entitled 'Sovereignty: The Heart of the Matter.' I think we, as Indian people, have no greater symbol of our future, no greater symbol of the work that we have in front of us . . . .It is our duty to make sure that our [vulnerable and special needs] children are well taken care of, . . . and I firmly believe that it is Indian people and Indian tribes that know what is best for our children. . . . to me, the heart of sovereignty is making these decisions.

"I've been the judge now at White Earth Tribal Court for about three years. . . . One of the things that I want to say about tribal courts is [that they] may not look like state courts. We don't follow state court procedures. We don't follow state law. And in my opinion, we don't have to follow the Adoption and Safe Families Act. We're not confined by your permanency guidelines. We are not confined by state or federal laws. We have our own laws. We have our own way of doing things."

County social workers and agency people "are more than welcome to come to our tribal courts. We welcome all of the information, all of the recommendations, all of the expertise that we can garner for our children. We welcome that. But it would behoove you, before you come to our court, to find out what to expect there."

As an example of the different perspectives in tribal courts, Fineday talked about the Indian people's definition of permanency. "If a child spends a year or two with grandma and then a year or two with an auntie and then a year or two with a cousin, that's not multiple placements; that's a child that has permanency within an extended family. There are courts that would view that as instability, as disruptive, as a negative living situation for a child. For Indian people, it simply is not viewed that way. We simply do not see that as multiple placements and as a lack of stability for our children.

"I think one of the other distinct differences that we have at White Earth Tribal Court" is that we "do not do fictional TPRs." If children live on the reservation, which is a small

community, they know who their parents and their extended family are. "Signing a piece of paper saying these are no longer this child's parents [is] a fictional TPR. It's not reality. Those children are going to continue to grow up in that community. They're going to continue to have contact with their parents. They're going to continue to have contact with their extended family. You aren't going to sever those bonds, nor should you want to. In White Earth Tribal Court, you won't see us doing fictional TPRs."

Herbert Lefler, Hennepin County Judge

Lefler addressed "what has worked" for Hennepin County. "We have worked very closely with the tribes. . . . There's an ongoing dialogue between the tribes and our county attorneys and the Department of Children and Family Services.

"Judge [Robert] Blaeser and I, who have been designated the two judges who hear ICWA cases in Hennepin county, have traveled and will continue to travel throughout the State of Minnesota meeting the various tribal representatives. We do this because we want them to see and know who we are. We want to know who they are.

"It has been my experience that things go well on the ICWA cases; things go marvelously well on the ICWA cases that I hear. And they go well because we know each other, we talk to each other, we respect each other.

"I'm not so naïve as to say that there is no racial aspect to this, but I will also tell you that I have trouble getting my orders enforced in [other counties] within the state court system. That tends to be the nature of the beast. It tends to be the nature of the people that do the sort of work that I do. We tend to think that maybe we are the ones that have the answers, and maybe the other person in the next county over doesn't quite understand it the way we do. I think that's wrong, and I think that it stands in the way of meshing these systems, the tribal system and the state systems, for the benefit of Indian children in the state.

"I do think that it is going to be important to find our common goals. Judge Fineday articulated very ably what our common goal is: To find good outcomes for the children in the State of Minnesota, all children in the State of Minnesota, to take their unique cultures, their unique ethnic backgrounds, and to provide them a place where they can learn about those backgrounds, can grow up in that heritage, and also thrive and be healthy and be happy."

Again Lefler emphasized the importance of respect for other people and their heritage, and the need to "get out and to meet and put a face on the people that you are dealing with. . . . it makes our ability to relate to each other much better. It is this infrastructure that provides the ability to communicate with each other, that helps close the gap between state courts and tribal courts."

James White, ICWA Advocate

White talked about experiences he has had as the advocate that travels to state and county courts across the United States for the Red Lake Band. He said state courts frequently do not understand his position. For example, he said, "I went to Salem, Oregon . . . ICWA is in Portland, and I was very, very surprised to see that the social workers were not familiar with this law. So it was again, 'who are you? What do you want?' . . . 'I'm a party to this action and I'm sitting here.'

"I presented my case. The judge took a break after I cited the sections, and he read up on it. He came back and told the county attorney, 'You sit down. We have no standing here. Transfer [the child] to Red Lake now.' I got out of there before they changed their mind."

He commented that he believes Indian child welfare should be incorporated into bar exams. He said, "In Red Lake we're immune from any kind of state law. A lot of people don't understand the only protection we have is our Tribal Code and the Indian Civil Rights Act. . . . The Bill of Rights does not take effect in Red Lake. A lot of people don't know that.

"The working relationship with the state court does need improvement. A lot of times people won't honor court orders, like the state orders stuff for Red Lake, and it stops right at that line because we're a sovereign nation. . . . But there are things that can be done. Just like [Judge Lefler] said, there's communication. I think not only in courts, but agency to agency. It's got to be done."

Best Practices: Examples from the Field

Fred Smith, Supervisor, Leech Lake Family Services; and
Susan Ault, Social Services Supervisor, Cass County Health & Human Services

Julia Jaakola, Coordinator, Fond du Lac Tribal Social Services; and
Don Bacigalupo, Child Protection Worker, Carlton County Human Services

Gertrude Buckanaga, Executive Director, Upper Midwest American Indian Center, and
Mary Renville, Child Protection Worker, ICWA Section, Hennepin County Children and Family Services

Cass County and Leech Lake Reservation

Susan Ault, Cass County

"I've found, in my work on Cass County/Leech Lake, that relationships were very important. . . . Those relationships began because of a commitment that the tribe and the county made to implement the Indian Child Welfare Act. It has been a process over time, a process of partnership.

"As new social workers come to the county, we go out with tribal workers, who introduce us and educate us and immerse us in the culture and in the Indian Child Welfare Act, family by family. That has been the strength of our work in Cass County." In addition, "we introduced a model in which a tribal worker accompanies a county worker doing even the first assessment on an Indian child.

"Over time the relationship has shifted. In the beginning, it was tribal workers providing information to county workers, and county workers making recommendations to the court. Now, it's essentially reversed. County workers provide some things such as getting paperwork done, knowing how to work the court system, knowing how to work some other systems. But the decision making lies with the tribe. When it comes time to make a recommendation to the court, the two social workers work together on that recommendation, but if there's a disagreement, we go with the recommendation of the tribal worker.

"The other thing Fred and I do is mediate those differences between the social workers. . . . we think it's important that we have a unified front, not only in making recommendations to the court, but in working with the family. It's important that the family . . . see that both of those workers are there for the safety of the children and the strength of those families."

Ault also talked about gaining permanency through placement with relatives, supported by relative custody assistance. "We are able to close the social services case and the court record, but the family still will receive income that is higher than MFIP [Minnesota Families in Partnership] is. So we have permanency, the relative still has a source of funding to help raise that child, but the court system doesn't continue to be the one making the choices in the child's life. The relative is the true parent and the custodian. That also means we have not terminated parental rights, and if that parent becomes capable of raising that child in the future, they have the ability to go back to court and regain custody of that child. So it is the best of both worlds."

Fred Smith, Leech Lake Reservation

Smith began by talking about difficulty with the concept of tribal enrollment . . . The tribe determines who is a member; it's not the county systems or the state board. So we avoid using that term, tribal enrollment. . . . There are kids that are not able to be enrolled, so they don't know where they belong . . . They try to get involved. The tribe does not accept them in the enrollment process, so then they don't know, 'Who am I? Where do I belong? Am I still a member of the tribe?' I think there needs to be either some type of ceremony or some type of tradition developed that will have these kids accepted into where they feel a part of the tribe."

He said another problem faced in Northern Minnesota is with juveniles brought in through the correctional system. While there is a need for early intervention, "the counties don't want to help juveniles." In addition, "when you go into the juvenile system, the courts have the control. We don't have, as a tribe, any say over that. I think that's a big problem. . . . The relatives are saying, 'Our son, our daughter, is in this place, or in lock up. Is there anything we can do for them?' . . . The hardest thing to do is to say to somebody, 'We can't help you.' . . . You try to give them some information and help them to get someone to advocate for them, because once they get into that system, they're just lost. The whole correctional system."

Smith talked about the potential for success in family group conferencing, a program in which extended family meets and attempts to come to consensus on steps to be taken in the child's best interests. "I think we should get the family and say, 'Okay, you decide what you want. What is your plan for this child?' rather than us making the decisions for the family."

He also stressed the importance of good communication between the tribe and the county, including the need for nondefensive listening. "I think a lot of us native people listen a lot. . . . I think, if you listen to people you can find out, what is their perspective? How do they see the situation? I like to look at the issue from the county's perspective. How are they looking at this? And the tribe, how do you see this?

"Probably the greatest challenge that we have in Leech Lake is trying to reduce out-of-home placements. One of our focuses is trying to look at more creative solutions. . . . Susan Ault was successful in getting a small grant funded for the truancy project. . . .

They have somebody hired who is doing a traditional service with juveniles. That has some promise of success with some situations where, right away at the early stages of intervention, you get to do traditional services with these kids and with these families. . . . In the future we're hoping we can hire somebody else to help that person with the process. Truancy is a huge problem in our area."
Kinship placements is another challenge. "What we've seen is a lot of times children are placed in kinship care and the relatives are not informed of what the problems are. That leads to disruptions and the kids are placed in another place. . . . It's real critical that we develop something where we work with the kin, training them in certain issues and how to deal with kids that have had these multiple problems so that these relative placements can be successful.

"There are strengths in all these families, and you have to recognize that in this line of work."

Carlton County and Fond Du Lac Reservation

Julia Jaakola, Fond Du Lac Reservation

Jaakola said, "The key for our success with ICWA in working with Indian families and Indian kids" is "the relationship piece."

Referring back to Red Horse's story about sovereignty, she added, "I've got to admit that when I started in Indian child welfare, I too was not clear what sovereignty was all about. But I've learned, and I continue to learn. . . . Some of my coworkers here are aware of the problems that we have when counties or other entities write grants and they write us in. They tell the funding sources that the tribe needs this . . . and they're going to do this for that tribe. Well, that's commendable that they can identify our problems and that they have ways they are going to resolve those, but they forget the sovereignty piece. They forget to come and ask the tribal council, 'Is there a way that we can work with you? Is there something we can do with you when you address your issues?' We can't lose sight of sovereignty in any of this."

Returning to the emphasis on relationship, Jaakola said, "There is a real need [for] relationship building. . . . You have to pick and choose those individuals who are going to assist you to get the job done, because not everyone is willing. Not everyone is interested. . . . Within Carlton County, we started several years ago to have a dialogue" between tribal workers and the county workers. "That set us upon a really good path. We had our most recent meeting here a couple of weeks ago, and I'm really proud to say we set a goal at that meeting that is the beginning of our county-tribal agreement.

"You can't work out an agreement if people are disrespectful and nasty to one another. You have to respect where each is coming from."

Don Baciagalupo, Carlton County

"You're looking at worker who worked to try to force coerce people to assimilate back in 1968 in a federal program. I've come through that to the kind of place I'm at now, and that's been an educational journey for me about respecting other cultures and also about who I am. As a matter of fact, my mother is 85, and she comes from a mixed blood family. She and her family have always denied that there was any native heritage in their family, despite the fact that somebody went back in the genealogy and showed that there probably was. . . . I told her I was coming over here to be on this panel. She said, 'That's okay. You can tell them that your mother is part Native.' So I'm taking that message from my mother. And that's quite a journey for her and I.

"What [sovereignty] has really meant to me, as a practitioner, is to try to learn how to be respectful of another culture. Last year I went down to Paraguay and visited my daughter and her husband, who are in the Peace Corp. I had no trouble understanding I was in a different culture, and that in that culture there were things that they did differently from the way I do things. Yet back, working day to day, I work in a society that says, and continues to say today, that if you have a different culture than the dominant culture, something is not okay, not right about you. So I keep talking about respect, because that's, I think, at the very bottom of the thing for me.

"I wish I could say that we always have agreement in our county with Fond du Lac and the workers there, but we don't. There are times when we have significant disagreements about case plans. But what I do in my job" is to co-manage ICWA cases "with someone from Fond Du Lac. And Fond Du Lac has been willing to participate as a co-manager in those cases. It is often the case that we will have dialogues of one kind or another, . . . and we'll discuss about how we will work together. That's the practical day-to-day way I think that the Indian Child Welfare Act is supposed to work.

"We have a county court and I have some legal responsibilities as a county worker to that court, and I take those responsibilities very seriously. So I'm going to make sure that I have a recommendation that is consistent with what I believe the law requires me to do. On the other hand, I absolutely know that if I want to have things work, I need help . . . from the tribe. I wish that the tribe had its own court in Carlton County, and I wish that they had the resources available to handle the cases that we are currently handling. But that's not the way it is right now."

Fond Du Lac participates fully in the child protection team meetings in Carlton County. "We discuss families and case situations and we deal with the issue about community standards . . . , what makes sense for this family and our community.

"We also have case consultations . . . and we [Carlton County's child protection workers, family workers, and probation department, and Fond Du Lac workers] sit down and talk about . . . what again are the needs that underline [a crime], whether or not a person is guilty or not of a crime, how can we be helpful to this family?"

He turned to the county/tribal agreement. Noting that "there's a tremendous unevenness of practice in the agency," he said, "I think the tribal/county agreement is going to be a way that we'll try to set a standard for how we're going to work together in our county. We do very good, I think, generally speaking, and the dialogue is an important part of that, but I think the tribal/county agreement will be another step in the right direction.

"I also think that the essence of providing services to families, whether they are Native or not Native, has to do with addressing the needs of the people involved. . . . When I can work with a Fond du Lac worker around the needs of a family, we do good together. We do really, really well together. They have an array of services at Fond du Lac that's better than what non-Native community has available to it in Carlton County. I'm more sure that kids are going to get services there."

He expressed some reservations about relative custody assistance, saying that "if it is part of a larger plan that means that there are going to be services available to help those aunts and uncles and cousins and whoever it is those children are placed with . . . then I'm all for it . . . .But if it's simply a way for the county to step . . . out and let those people go with profound needs, then I'm opposed to it. . . . And that's what I see happen. I've seen counties virtually dump children into families with no information, no planning, and close the court case, and it's a done deal. And that's not right."

Hennepin County and Upper Midwest American Indian Center

Mary Renville, Hennepin County

Renville noted that she is a child protection worker with the ICWA section of Hennepin County Children and Family Services Department, who comes from the Sisseton/Wahpeton Dakota Nation in South Dakota. She told the audience about the ICWA section.

"We started in 1996. We are probably one of three in the entire country who have an Indian child welfare section. We got started through a really dedicated staff. We called ourselves the American Indian Staff Committee. But we didn't do it by ourselves . . . .There were so many people who had been working on this for years. It almost seemed like a never-ending battle, but it did come into being.

"Today there are two judges who are dedicated to serving within the Indian child welfare frame. There are four attorneys within the county who work specifically on ICWA cases. There are 30 ICWA staff members, three supervisors, three units who have the responsibility for active efforts workers, child protection workers, child services workers, case management aides, long-term foster care. So there's a whole range of services that the ICWA section provides in its continuum of care for kids.

"We really wanted to somehow define best practices" today. Best practices require remembering the spirit rather than the letter of the law and working closely with other Indian professionals within the urban Indian community. For example, the Hennepin

County ICWA Unit works closely with the Upper Midwest American Indian Center and the Minnesota Indian Movement Resource Center. However, "the places and people that we rely most on are the tribal representatives and the tribes for their input on case planning, kinship and relative searches, and permanency decisions.

"In the ICWA section we have to make our own value judgments regarding timelines like those related to ASFA and ICWA." Many young moms need more than six months or a year. They may need three years. They need more than one chance.

We also look at active efforts. "We have to always try to figure out what are remedial and rehabilitative services? That reminds me of the case where the kids were tardy, were absent, came to school dirty. We've got non-Indian school social workers out there saying, 'This is unacceptable.' I went into the home and I found out that . . . here's a young mother, younger than my daughter. She's got eight children. She's a single mom. She has no transportation. She has no laundry. . . . and she's living in a two bedroom home without a partner. No wonder these kids are dirty. No wonder they are tardy. So does this mean we treat the truancy issue? Do we refer it out to school support? Where do we send this when it really isn't a child protection issue? With active efforts we have to look beyond what brought them into the system . . . The real problem is housing, inadequate housing. She just moved a couple weeks ago into a five-bedroom home with her own room and washing machine, and she is so happy. That's what active access is about. . . . way beyond diligent efforts and way beyond reasonable efforts."

Gertrude Buckanaga, Upper Midwest American Indian Center

"Best practices in our agency is having good, qualified staff." Upper Midwest is the only urban Indian agency in Minnesota that is a licensing agency for both foster care and adoption. In the beginning it was an advocacy program for parents whose children were in out-of-home placement. "In visiting the homes and promoting family reunification, we discovered that a number of American Indian children were in non-Indian homes. The Indian Child Welfare Act was not being followed, so we did some research and started our foster care program. . . . In 1988 we became licensed as an adoption agency.

"The staff . . . are what a best practices agency is. Our staff comes from Red Lake, White Earth, Leech Lake, Upper Sioux, and Sisseton. We try to hire all Indian staff. . . . They do the training of foster parents, 24 hours of pre-training. They monitor all the rooms. They do all the criminal background checks. They do ongoing training with both the foster parent and the adoptive parent. They do a lot of family preservation. . . . They make sure all the records are in compliance. . . . This crew goes to court. They do advocacy. They network with a number of agencies in Minneapolis: Pacer Center, Pilot City, Indian Health Board, Minneapolis Indian Center, Minnesota Women's Resource Center, the tribal representatives.

"And good practices means breaking down barriers for Indian children and Indian families, and not totally agreeing with colleagues, having differences, but working to agree so that children have a safe place to live.

"We have a long way to go yet. We have to deal with the Safe Families Act. . . . We are running into barriers because some people are trained to say that our families are going to be terminated in six months, and probably four. We as Indian people in the State of Minnesota are going to have to look at these rules . . . because you're going to run into workers who are going to be following the Safe Families Act.

"Sovereignty, tribal council, tribal staff play a key part in keeping our children in safe homes or with their relatives.

"One issues that we have to look at is that . . . over 70 percent of Indians live in the urban area. In the 2000 census, it's predicated that over 80 percent of American Indians will live in an urban area. So we need to look at predictions. We need to look at inter-tribal . . . children. That means they're from two different reservations, and the total Indian blood could be over a quarter, so we really need to look at that in the state of Minnesota."

Strengthening the Infrastructure of ICWA: Panel Presentation

Rose Robinson
Director, Minnesota Indian Women's Resource Center

Rose Andrade
ICWA Urban Representative, Red Lake Reservation

Georgette Christensen
Director, Family Services, Mille Lacs Band of Chippewa

Rose Robinson

Ms. Robinson discussed the work of the Minnesota Indian Women's Resource Center. The majority of people the Center works with are referred through Hennepin County Child Protection, some through Ramsey and other counties in the seven-county metropolitan area, and some are self-referred. "What we do at the Resource Center is about families and children. We see the children coming into childcare. We see the mom's coming through our programs. We have an outpatient chemical dependency program, a program for women who are pregnant, and a reunification program. We have a statewide training program on chemical dependency topics. We have a program called Healing Journey for women who have been in treatment several times."

"So we have a variety of programs that work for a number of people: young moms, grandmothers, and men as well. We have a number of men coming to our program who are also working on reunification. One of the things we are seeing . . . is there are just not enough resources for fathers. That's one area that we are working on."

A big problem in working with ICWA is lack of resources. "The law was passed, and along with it, no dollars . . . .If there are no resources, it's hard to comply. . . . The enrollment issues come up. Relative custody issues. It's like, yes, it's really nice to be able to place children with relatives, but we need financial resources to be able to do that. They also need to have access to resources that foster parents have had in the past. That's a big problem; when there's a transfer of legal custody, it seems like all services stop.

"We need to support our families because families need a lot of help. . . . As someone said earlier, tribes know best."

Rose Andrade

Ms. Andrade described her work experiences and then how she responded to a request to become a guardian ad litem. "So my history began with the guardian ad litem program.

I've worked for the Minnesota Indian Women's Resource Center, the Urban Coalition, The City, Inc."

She then spoke about areas "we could work on to improve ICWA and strengthen that infrastructure for our children and our communities.

"One of the things that has really come to my attention as far as strengthening the infrastructure of ICWA is funds." Flexible financing could help in placement of children in extended family. For instance, "there have been situations where I have located aunts and uncles . . . who were deemed inappropriate because they were using," but were willing to go into treatment. If money that would be spent on permanent foster care could be spent instead on treatment for the aunt or uncle, it would cost less than permanent foster care and allow the children to be placed with family.

"Another thing that I have found to be a big problem . . . is a lack of integrity among" workers and courts in a certain county. "I'm real thankful that we do have our own judicial system."

Georgette Christensen

Ms. Christensen spoke about "the things that I would like to do and the things that [the Mille Lacs band] is doing.

"I've been director of Family Services there for five years this September. When I first started there I had three ICWA workers. I now have six ICWA workers. We have satellite offices in the Duluth and the Minneapolis area. . . . We primarily do Indian child welfare services, but I have a foster care program. We have band standards that we license our foster homes under on the reservation. We also have a teen pregnancy program, a domestic violence program, and men's anger group."

Extended family is an extremely important aspect of strengthening ICWA. We have maybe 32 foster families licensed on the reservations. We require 12 hours of training, but "foster parents talk about needing childcare and mileage, so we have that extra expense tacked on to helping the relatives care for their children."

"We starting a grandparents support group—providing training and mileage for them also."

Other things we would like to look at are "getting more types of foster homes, like emergency shelters where we can place children on the reservation for a 72-hour hold"; establishing "family foster care"; "becoming a child placing agency"; "expanding our homes throughout the State of Minnesota"; and "doing a tribal-state IV-E contract where we can directly contract with the State for those funds."

A big issue for tribes to look at is having access to the funding sources (IV-B, IV-E, child welfare target case management) and the information systems (such as the statewide

Social Services Information System (SSIS) that the counties have access to. This would help reservations "provide the same types of services that counties can."

We have to look at working with counties that are not complying with ICWA. "I have to say there are counties that we have a wonderful relationship with, but there are also counties" in "severe noncompliance. How do we address that issue when people cannot come to the table and be respectful and start looking at the issues, and how can we start working around that?

"Mille Lacs has recently passed a resolution that as long as one of the biological parents is a Mille Lacs Band member who is enrolled, we will cover their children for purposes of the Indian Child Welfare Act. So we do now have the ability to go into court and cover all children, whether or not they are enrolled, as long as their parents are enrolled. We do go into court and treat it as an ICWA case.

"The Mille Lacs Band also has a child protection team, which is made up of all the departments on the reservation. A Mille Lacs county supervisor sits on the protection team, and Hennepin County staff come "frequently to discuss adoption and permanency issues. I enjoy that. It's a lot of fun. Any other county that's here that may have a Mille Lacs Band child within your county system, I invite you to come to our team also to do case consultation."

The Mille Lacs Band keeps cases open for monitoring for six months after counties have closed them "to provide support services and to keep an eye on the family and the kids to see how things are going.

"Another area of advocacy . . . is the issue of new legislation. . . . A big concern for tribes is that there will be no loopholes, that the Indian Child Welfare Act is looked at and considered when writing out legislation. We're more than willing to work with the counties and state and federal level. Whatever it may be that we need to do."

Concluding Remarks

Valerie Lane and Esther Wattenberg made brief remarks to conclude the conference

Valerie Lane

"I want to remind you that the National Indian Child Welfare Association is a tremendous resource for you. I encourage each of you to become a member. NICWA's website is httpp://www.nicwa.org."

"If you have any children that you're concerned about in Texas . . . feel free to call upon me and I'll be glad to be a resource or try to put you in touch with someone in Texas who can help you.

"We need to get the message about ICWA out, not just to attorneys, judges, social workers, and investigators, but to Indian people [across the country]. When they come to court . . ., they don't know they have the right to counsel in ICWA cases, because no one in CPS has told them. The worker doesn't know, and the DA's office hasn't raised the issue. So we've got to inform Native people about their rights under ICWA . . . at pow-wows, at health centers—wherever native people come together.

"This has been a wonderful conference. . . . I'm looking forward to the next gathering and to the next sharing of information. . . . I encourage you to keep going, to keep moving forward, and to keep healthy. That's very, very important. What we do is very, very stressful. Keep healthy and well so that you can continue to work to beneefit the Seventh Generation."

Esther Wattenberg

Professor Wattenberg ended the conference by noting that a forward-looking agenda will have to include attention to both community and the professional concerns of practice and policy."

"The content, the philosophy, the direction, the structure of ICWA is not well known to the families and the communities at large. I think that is a major task ahead of us.

"We learned a lot today about improving county/tribal workers' relationships." It requires "the opportunity to speak to each other in informal and guiding ways. It requires time. . . . We must really pay attention to creating time for that . . . A consideration of county-tribal agreements should also be explored. Attention should be paid to the counties that are out-of-compliance with ICWA.

The sources of funding for improving responses to Native American children through ICWA are not yet firmly in place. This is a key agenda item.

"Our Center stands to be as useful as you think it could be for the excellent organizations that already exist and the excellent work that is going on. . . . We have a tremendously rich set of resources that have gathered here today. I appreciate very much on behalf of the University of Minnesota and its various components your coming today. Thank you all."

Appendix A

Principles of Permanency Planning and the Indian Child Welfare Act

PRINCIPLES OF PERMANENCY PLANNING AND THE INDIAN CHILD WELFARE ACT

A SUMMARY OF A DEPARTMENT OF HUMAN SERVICES GUIDANCE

CASES INVOLVING IMMEDIATE PERMANENCY FOR AN INDIAN CHILD

The Indian Child Welfare Act (ICWA) requires that active efforts be provided in any case involving the removal of an Indian child from a parent or Indian custodian. The provisions of Minnesota law that permit the juvenile court to authorize stopping reunification efforts do NOT apply to the active efforts requirement for cases covered by ICWA. When a case involves an Indian child in permanency planning, the agency must comply with the requirements of ICWA and the Minnesota Family Preservation Act.

REQUIRED CONCURRENT PLANNING ACTIVITIES FOR IMMEDIATE PERMANENCY CASES INVOLVING AN INDIAN CHILD

Where there is an instance requiring immediate permanency for an Indian child, the agency must:

1.) *Conduct a thorough assessment of both parents and the child:*

The agency must identify and locate both parents of the Indian child, and if this is not possible, document its attempts in the case record. The agency must also thoroughly assess both parents of the child. Additionally, the agency must consult with the child's tribe regarding the thorough assessment of the parents, the child's assessment, and appropriate services that should be provided to the parents. The agency may also consult with other Indian social service agencies regarding the provision of culturally appropriate services.

2.) *Full disclosure:*

The agency must completely explore with and explain to the parent(s) and, where appropriate, the child all possible outcomes of the concurrent permanency planning process with the idea that the parent, child, and other family will participate in the development of the case plan. The agency must also disclose its assessment as, where appropriate, each person's rights and responsibilities to the parent(s), the child if appropriate, the guardian ad litem, the child's tribe, and the attorneys for all parties.

3.) *Recruit permanency resource family for the child:*

In immediate permanency cases, the agency must identify, recruit, assess, and approve a legally viable permanency resource family for the child. The agency must make reasonable efforts to identify and locate extended family members. The agency should also be aware that the priority for placement created by ICWA is different for foster placement than for adoption, and thus, the agency should consult with their county attorney and the child's tribe regarding the applicable placement preference under ICWA. The agency must consult with the child's tribe regarding

relatives or other Indian families who might serve as a permanency resource family for the child. The agency must also seek the tribe's opinion about the appropriateness of particular placements and must defer to that opinion when the tribe has intervened in the court proceeding.

4.) *Petition to Terminate Parental Rights, Transfer Permanent Legal and Physical Custody To a Relative, and Documentation of the Agency's Decision-making Process*

Requirements for taking action in juvenile court are the same for both Indian and non-Indian children. However, active efforts are always required, so the provision of services to the parents on an Indian child cannot be considered futile. Furthermore, ICWA and the Minnesota Family Preservation Act continue to be in effect, and thus require testimony of a qualified Indian expert and proof beyond a reasonable doubt for termination of parental rights. In instances of egregious harm, abandoned infants, or previous involuntary termination of parental rights, within 30 days of the child's entering out-of-home care, the county attorney must file either:

- a termination of parental rights petition
- a petition to transfer permanent legal and physical custody to a relative
- documentation of a compelling reason for not filing a petition or to transfer legal custody

5.) *Identify and deliver reunification services to parents and place the child with the permanency resource family:*

Because active efforts are always required for cases involving Indian children, the agency must develop a case plan for the parents, make active efforts to assist the parents in engaging in the use of services, and regularly reassess each parent's prognosis. If, based on a thorough assessment of the parents, the agency determines that the child's placement may continue longer than 90 days, the child's assessment and placement of the child with the permanency resource family should take place as soon as possible. If, based on a thorough assessment of the parents, the agency determines that the child is likely to return home in less than 90 days, the agency need not immediately proceed with the child's assessment and placement of the child with a permanency resource family. In any case where the child's placement last longer than 90 days and regardless of the parents' prognosis, the agency should complete the child's assessment and place the child with the permanency resource family. The agency must notify the child's tribe of the anticipated move.

6.) *Proceeding to permanency:*

As the agency provides active efforts and reunification services, the agency, at short, regular intervals, should reassess each parent's prognosis and ability to utilize reunification services, based on written reports from culturally appropriate direct service providers.

As soon as the parent makes sufficient progress in utilizing reunification services so as to remove the likelihood of serious emotional of physical harm to the child, in consultation with the child's tribe, the agency should ask the court to return the child to the care of the parent, recommend a plan for continued services, and identify the need for continued monitoring of the child and family upon completion of all services required by the case plan. If the parent becomes absent, significantly fails visitation, or is significantly noncompliant with the case plan, the

agency must consult with the county attorney and the child's tribe regarding achieving permanency for the child.

The agency must always apprise the child's tribe of the parent's progress on the case plan and notify the tribe of any change in the child's placement.

REQUIRED CONCURRENT PERMANENCY PLANNING ACTIVITY FOR CHILDREN UNDER EIGHT AT TIME OF PLACEMENT

As of July 1, 1999, CHIPS cases involving the placement of children under age eight at the time the petition was filed must have a permanency placement determination hearing at six months of placement. The court may order the agency to file a termination of parental rights petition or a petition to transfer permanent legal and physical custody to a relative, unless the parents are maintaining contact with the child and complying with the case plan.

The court may **not** issue this order if grounds to terminate parental rights do not exist. Grounds do not exist when there have been no or inadequate reasonable efforts, or in the case of an Indian child, active efforts, by the agency, including failure to provide services that were:

- relevant to the safety and protection of the child
- adequate to meet the needs of the child and the family
- culturally appropriate
- available and accessible
- consistent and timely, and
- realistic under the circumstances (Minn. Stat. 260.012(c))

For cases involving Indian children under age eight, the agency must comply with all requirements of ICWA and the Minnesota Family preservation Act, notify the tribe of the child's placement, make reasonable efforts to locate extended family members, and consult with the child's tribe about culturally appropriate services for each parent. The agency may also consult with other Indian social service agencies regarding the provision of culturally appropriate services.

Source: MN Dept. Human Services, Family and Children's Services Division. (1998). Concurrent permanency planning guidance. St. Paul, MN: Author.

Prepared by A. Rieke

Appendix B

Highlights:
"Minnesota's American Indian Children: What the Data Tells Us"

Highlights from What the Data Tells Us[1]: A look at Minnesota's American Indian Children – 1998

In 1998 there were 1,395,422 children aged 18 and younger living in Minnesota. Of those children 26,198 (1.8%) were identified as American Indian Children

American Indian Children are found in out-of-home care at a rate **more than five times** higher than in the general population of children.

Almost thirty percent **(29.1%)** of American Indian children in out-of-home care are placed in kinship care.

American Indian Children suffer a very high proportion of Emergency Shelter placements.

Neglect[2] is by far the most common form of maltreatment experienced by American Indian Children, accounting for **615 or 82%** of the cases of maltreatment of American Indian Children.

Prepared by Katherine Luke: Research Assistant – Center for Advanced Studies in Child Welfare, University of Minnesota; School of Social Work. May 15, 2000.

[1] This data was compiled from Children in Out-of-Home Care: A 1998 Minnesota Report, Minnesota Department of Human Services Bulletin; February 2000.

[2] Neglect, as defined by Minn Stat. section 262.556 subdivision (2) means failure by a person responsible for the child's care to supply a child with necessary food, clothing, shelter, or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so.

Minnesota's American Indian[1] Children: What the Data Tells Us[2]

In 1998 there were 1,395,422 children aged 18 and younger living in Minnesota. Of those children 26,198 (1.8%) were identified as American Indian.

Minnesota's American Indian Children in Out-of-Home Care

- Total number of Minnesota children in out-of-home care during 1998– **18,858.**
- Total number of American Indian Children in Minnesota in out-of-home care in 1998 – **2,101 (11.1%)**
- Percentage of the population of Minnesota Children who are American Indian– **1.8%.**
- American Indian Children are found in out-of-home care at a rate **five times** that higher than in the general population.
- Minnesota counties that reported American Indian Children make up 15% or more of their population of children in care:
    - Brown - 20%
    - Carver - 15.6%
    - Clay - 19.8
    - Fairbault - 26.7%
    - Jackson - 20%
    - Morrison - 16.1%
    - Renville – 25%
    - Yellow Medicine 27.1%
- Ten Counties reported an American Indian Children in out-of-home care population from 10 – 15%. Those counties are; Aitkin (14.3%), Cass (19%), Hennepin (11.5%), Hubbard (13.7), Kandiyohi (10.3%), Mille Lacs (12.2%), Polk (11.6), St. Louis (13.2%), and Wadena (12.5%).
- Total number of Minnesota's children in out-of-home care who are placed in kinship care– **2,253 (19.2%)**
- Total number of Minnesota's American Indian children in out-of-home care who are placed in kinship care – **440 (29.1%).**
- American Indian Children have the highest rates of kinship care of any racial/ethnic group.

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[1] Whatever race is reported first by the county is the one used to determine the primary race of the child. For instance if a child was American Indian and White, American Indian is documented as the child's primary race. Thus, if a child is reported as being White and American Indian the child is not counted in the data unless otherwise specified. Additionally, if the child is reported to have Hispanic heritage then the child is recorded as Hispanic regardless of other races that were reported.

[2] This data was compiled from Children in Out-of-Home Care: A 1998 Minnesota Report. Minnesota Department of Human Services Bulletin; February 2000.

Number of Placements - 1998

American Indian children suffer more placements per episode of care than do the total population of children in care.

American Indian Children			**Total Population of Children**		
Placements per Episode	Number of Children	Percent	Placements per Episode	Number of Children	Percent
1	529	58.8%	1	6508	67%
2	175	19.5%	2	1859	19%
3	101	11.2%	3	655	7%
4	30	3.3%	4	270	3%
5	22	2.4%	5	145	1%
6-10	37	4.1%	6-10	203	2%
11 or more	5	.5%	11 or more	37	1%

Age and Gender of American Indian Children at Entrance to Care – 1997

	Female			**Male**	
Age	# of Children	Percent	Age	# of Children	Percent
0-3	78	47%	0-3	88	53%
4-8	111	54%	4-8	95	46%
9-12	92	47%	9-12	102	53%
13 and older	235	51%	13 and older	230	49%
Total	516	50%	Total	515	50%

Living Arrangement for Children in Out-Of-Home Care by Tribe - 1997

Place	**MN Chippewa**	**Red Lake Band(s)**	**MN Sioux**	**Other U.S**	**Non U.S Tribes**
Family Foster Care	1025 (53%)	221 (58%)	52 (50%)	316 (53%)	17 (36%)
Non-Finalized Adoptive Homes	28 (1%)	7 (2%)		16 (3%)	9 (19%)
Emergency Shelter	446 (23%)	96 (25%)	22 (21%)	213 (28%)	19 (40%)
Corrections	201 (10%)	7 (2%)	11 (10%)	31 (5%)	1 (2%)
Group Living	241 (12%)	47 (12%)	18 (18%)	68 (12%)	1 (2%)
Total	1943	379	105	600	47

Maltreatment of American Indian Children – 1998

747 American Indian Children were determined to be Victims of Maltreatment through assessment by Minnesota Child Protective Services in 1998.

Allegations		Determinations	
Type	Frequency	Type	Frequency
Neglect	1165	Neglect	615
Physical Abuse	396	Physical Abuse	96
Sexual Abuse	112	Sexual Abuse	35
Mental Injury	3	Mental Injury	1
Total	1676	Total	747

Neglect was the determined form of maltreatment in *82%* of the cases of maltreatment of American Indian Children.

The Minnesota Reporting of Maltreatment to Minors Act (Minnesota Statues, section 626.556, as found in subdivision 2) contains the following definition of child neglect:

> *Neglect* means failure be a person responsible for the child with necessary food, clothing , shelter or medical care when reasonable able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so. Nothing in this section shall be construed to mean a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends on spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care: except that there is a duty to report if a lack of medical care may cause imminent and serious danger to the child's health. This section does not impose upon persons not otherwise legally responsible for providing a child with necessary food, clothing, shelter, or medical care, a duty to provide that care. "Neglect" includes prenatal exposure to a controlled substance, as defined in section 253B.02 subdivision2, used be a mother for a non-medical purpose, as evidenced by a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance. Neglect also means "medical neglect" as defined in section 260.015, subdivision 2a, clause (5).

Prepared by Katherine Luke, Research Assistant – Center for Advanced Studies in Child Welfare, University of Minnesota; School of Social Work. May 15, 2000.

Appendix C

Minnesota Department of Human Services
CHIPS to Permanency Timeline

MINNESOTA DEPARTMENT OF HUMAN SERVICES
Family and Children's Services Division
CHIPS TO PERMANENCY TIMELINE
For American Indian Children

Prepared by Ann Ahlstrom and Georgia Wettlin-Larsen

DAY	EVENT	OTHER	ICWA/MIFPA (Consult DHS Social Services Manual Section on Indian Children-XIII 3500-3684)
1	Child removed from home	If child is in voluntary placement[1]. CHIPS petition must be filed 90 days after placement; permanency time clock starts to run at 60 days after placement	Actions taken regarding identification of child as an Indian child. A child believed to be an Indian child must be treated as an ICWA eligible child until the Tribe/(s) indicates ineligibility for membership or fails to respond. State or Tribal Court jurisdiction determination made. Tribe can intervene at any time. Written consent before Judge if voluntary. Notice to Tribe. ICWA Placement preferences required. Defer to Tribe as to suitability of particular placement.
3	Emergency Protective Care Hearing		Contact Tribal Social Services immediately. Active efforts to return child must be documented when imminent risk of danger, harm no longer exists.
3 - 13	Admit/Deny Hearing		Must meet notice requirement to Tribe 10 days prior to hearing; Tribe may request additional 20 days for preparation. 25 U.S.C. 1912
30	Case Plan filed with Court		Case Planning done jointly with Tribal Social Services. Tribal access to all case records. Active efforts requirement to provide services towards reunification.
14 - 53	Pretrial conference		Notice to Tribal Social services
63, but not later than day 93	Trial	Most cases should come to trial by day 63;county attorney determines whether criminal or juvenile case proceeds first in cases of egregious harm.260C.301 subd.. 2A	Notice requirements. Dependency & neglect proved by clear and convincing evidence. Testimony of qualified expert. Active efforts requirements continue to final disposition.
78	Findings Adjudication Disposition	To extent practicable, court shall enter disposition order same day as finding child in need of protection or services. 260C.201	
78 - 93	Disposition	If not ordered at CHIPS adjudication, ordered within 15 days if child over age 7, within 10 days if child under age 8. 260C.201	

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168 - 178	Review Hearing	At any review hearing: 1. The child may be returned home if parent has made progress on case plan such that the conditions which led to the placement have been mitigated to the point home is safe for the child: or 2. If parent is not making significant progress on case plan, agency can move to permanency.	Notice requirements. Qualified expert witness testimony. Active efforts requirements.
180	Permanency Review for children under 8 addresses: 1. Parent's progress on case plan and visitation; 2. Agencies provision of services	If permanent out-of-home placement appears to be appropriate, TPR should be filed ASAP; (unless compelling reasons are cited for not doing so)TPLPC must be filed within 30 days and trial on TPLPC 30 days after pleadings	Notice requirements. Qualified expert witness testimony. Active efforts requirement. In voluntary TPR, consent executed before judge; parent informed of right to withdraw prior to final decree; and, after final decree may withdraw consent if fraud or duress. Consent to voluntary TPR cannot be given prior to or within 10 days of birth. Placement preference requirements. Standard of proof "beyond a reasonable doubt".
258 - 268	Review hearing		Notice requirements. Tribal Social Services involvement
348 - 358	Review hearing		Notice requirements. Tribal Social Services involvement.
335	Permanency Pleadings filed		Notice requirements. Tribal Social Services involvement.
345	Admit/Deny/ Pretrial		Notice requirements. Tribal Social Services.
365 - 425	Permanency Placement Determination Hearing	Trial on permanency matter other than TPR must begin by day 365; trial on TPR must begin 90 after TPR petition is filed; (unless compelling reasons exist for not doing so).	Notice requirements. Tribal Social Services involvement. Active efforts requirement met. Defer to Tribe regarding suitability of particular placement. TPR; testimony of qualified expert witness and proven beyond a reasonable doubt. Placement preference provisions met.
Within 15 days of end of trial	Permanency Order issued by Court[2]		Permanency Dispositions; return child home; TPLPCR; Guardianship; long-term foster care (note exceptions); TPR; Adoption. Placement preference provisions must be met unless good cause proven to depart from placement preferences.
		Required Reviews Post-Permanency Order	
If TPLPC, Juvenile Court jurisdiction ends; future hearings, if needed, are in Family Court	If TPR ordered, court hearing every 90 days to review progress towards adoption	If long-term foster care, review once per year in court to ensure child's needs are being met, if placement disrupts, return to court sooner.	Notice requirements. Tribal Social Services involvement

[1] If child is in placement due solely to child's status as developmentally delayed or emotionally handicapped, child in not subject to permanency requirements. Minn. Stat. 260C.201 subd.11. [2] If child is returned home at permanency hearing, court jurisdiction may continue as long as necessary to ensure child's safety, health and well being. Court hearings must be held at least every 6 months.

February 11, 2000

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